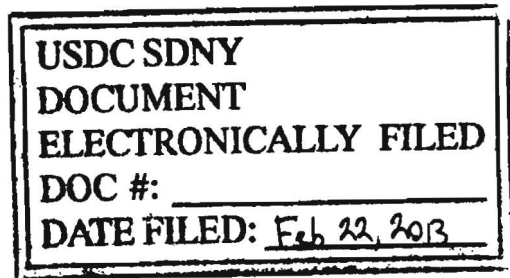


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



-----X  
GARY MILLER

Plaintiff,

v.

BERN LOIBL, et al.,

Defendants.  
-----X

11 Civ. 2182

**OPINION**

Plaintiff Gary Miller moves to extend his time to move to replace the recently-deceased Bern Loibl with Loibl's estate as a defendant in this suit. Miller could not move to substitute the defendant within the 90 days allowed under Fed. R. Civ. P. 25(a) due to his apparently-mistaken belief that no executor had yet been appointed to Loibl's estate (a mistake that, it seems, defendant's counsel was aware of but made no effort to correct). He concedes that it was out of mere carelessness that he failed to move for additional time within the 90 days allowed. His deadline to move was January 7, 2013 but he did not move until January 18, 2013, eleven days later.

Nonetheless, Miller's neglect in discovering the executor's appointment is excusable, and defendant can have suffered no conceivable prejudice due to the delay. Furthermore, refusal to permit the untimely motion would prevent

the continuation of what may be an otherwise-meritorious action. See Staggars v. Otto Gerdau Co., 359 F.2d 292, 296 (2d Cir. 1966).

The motion is granted. Plaintiff's deadline to move under Rule 25(a) is extended until March 8, 2013.

So ordered.

Dated: New York, New York  
February 22, 2013

A handwritten signature in cursive script, reading "Thomas P. Griesa". The signature is written in dark ink and is positioned above a horizontal line.

Thomas P. Griesa  
United States District Judge